IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3150 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHODIDAS M PARMAR
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR RA MISHRA for the Petitioner
MR HEMANT MAKWANA, Assistant Government Pleader for the Respondents

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 28/11/2007

ORAL JUDGMENT

1. The petitioner has approached this Court under Article 226 of the Constitution of India for writ of Mandamus or any other appropriate direction to the respondents for according him the benefit of higher pay scale pursuant to Government Resolution dated

5.7.1991 as he is stagnated on this post till the date of his retirement without getting any promotion.

2. The facts, in brief, deserve to be set out as under:

2.1. The petitioner has undergone the course conducted by I.T.I for Draftsman Mechanical. The petitioner joined the Institution on 1.4.1961 and left the same on 9.6.1963 to join respondent No.3. He joined as Junior Lecturer in Engineering Drawing at Parekh and Mehta High School. Certificate dated 23.1.1992 issued by the Principal of Parekh and Mehtal High School is annexed with the petition.

2.2. The petitioner joined respondent No.3 Institution on 27.6.1963 and retired on the same post, i.e. Junior Lecturer, on 31.5.1994.

2.3. The grievance of the petitioner is that he has served the cadre without getting any benefits whatsoever. The Government of Gujarat issued Resolution dated 5.7.1991 for removing feeling of frustration among such employees who were stagnating on the same post without getting any promotion, though eligible for promotion. The petitioner did not get any promotion and, therefore, he has filed the present petition.

2.4. The petitioner has cited one incident of one Shri Kamaluddin Abbasbhai Sorthia, who was similarly

situated and who had been granted the benefit of higher grade scale benefit. The petitioner has, being aggrieved by non-granting of higher grade scale, approached this Court.

3. Shri R.A. Mishra, learned counsel appearing for the petitioner, submitted that, looking to the reply, the petitioner did not fulfill the qualification criteria for promotional post. However, identical situated one Shri Kamaluddin Abbasbhai Sorthia was granted the benefit of higher grade pay scale and, therefore, at least, in view of the provisions of Articles 14 and 16 of the Constitution of India, the petitioner also deserves to be accorded the similar treatment.

4. Shri Hemant Makwana, learned Assistant Government Pleader, submitted that the petitioner has belatedly filed the petition and, on this ground, the same should have been rejected without prejudice to the aforesaid contentions. He further submitted that the Scheme of giving the benefit of higher grade pay scale is eloquently clear where-under, promotion was to be given to an employee, who is otherwise eligible for holding the promotional post and who has not got promotion for want of vacancy or otherwise. Affidavit-in-reply filed on behalf of the respondents contains the averments that the petitioner was not fulfilling the qualification criteria for the promotional post. The petitioner who was working as Junior Lecturer was not holding

the qualification criteria for further promotion as the Recruitment Rules governs the promotional post. Therefore, on this count, the petition deserves to be dismissed.

5. The learned Assistant Government Pleader further submitted that the allegation with regard to according the higher pay scale to Shri Kamaluddin Abbasbhai Sorthia cannot be substantiated in view of the fact that the deponent of the affidavit-in-reply has averred in the reply that, at least, the department did not approve any such granting of higher pay scale to said Shri Kamaluddin Abbasbhai Sorthia. He further submits that the petition, therefore, deserves to be dismissed.

6. The petitioner was holding at the relevant time the post of Junior Clerk in the pay scale of Rs.1350-2200. The promotional post therefrom was the post of Assistant Lecturer in the pay scale of Rs.1400-2600. The Recruitment Rules framed under the provisions of Article 309 of the Constitution of India, prescribe the qualifications; viz. B.E. Mechanical Engineering or B.E. Electrical Engineering or Diploma in Mechanical Engineering with minimum II Class or Diploma in Electrical Engineering with minimum II Class or Diploma in Automobile Engineering with minimum II Class.

7. The Recruitment Rules is annexed with the reply. It is not disputed by the learned counsel for

the petitioner that the petitioner did not possess any of the aforesaid qualifications prescribed in the Recruitment Rules for the post of Assistant Lecturer and, therefore, he could not have been eligible to the said benefit of Government Resolution dated 5.7.1991 or substituted Resolution dated 16.8.1994. This brings to this Court the second question of discrimination. The deponent of the affidavit-in-reply has clearly stated that even the department had no knowledge of any such scale given to Shri Kamaluddin Abbasbhai Sorthia. In other words, it can be said that the scale of Shri Kamaluddin Abbasbhai Sorthia was not approved by the department.

9. In view of the above, the petition fails as it is bereft of merit. Accordingly, the petition is dismissed. Rule is discharged.

(S.R.BRAHMBHATT, J.)

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